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IN THE

SUPREME COURT OF THE UNITED STATES

No. 80-1008

OCTOBER TERM, 1980

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

JEFFREY BAYLES,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF ILLINOIS

SUPPLEMENTAL BRIEF FOR PETITIONER

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SUPPLEMENTAL ARGUMENT

Subsequent to the filing of the petition for a Writ of Certiorari, The Second Circuit Court of Appeals opinion in *United States v. Markland*, __ F.2d __ (2nd Cir. December 8, 1980) (hereinafter *Markland*) came to the attention of petitioner's counsel.[1] The significance of this opinion is twofold: first, because of its factual similarity to the case at bar, respondent cited the district court opinion in *Markland*,[2] as authority for his

[1] For the Court's convenience the opinion is attached hereto as Appendix B.

[2] *United States v. Markland*, 489 F. Supp. 932 (D. Conn. 1980).

position in the Illinois Supreme Court. Second, in reversing the district court decision, the Court of Appeals addressed a number of factors that are of great relevance and importance to the question presented in this case. Accordingly, petitioner submits this supplemental brief to draw the Court's attention to the *Markland* case, for its consideration in deciding the petition for a Writ of Certiorari.

As stated, the *Markland* case is factually similar to the case at bar. There, the defendant lost control of his jeep, causing it to smash into a guardrail and overturn. The defendant was injured and had to be hospitalized. As a result of this accident, the contents of the vehicle were strewn about the area of the overturned jeep. One of the items thrown from the jeep was a plastic, zippered beverage container bearing a "Schlitz" beer logo. The police officer who investigated the accident inventoried the contents of the "Schlitz" container. They included two undelivered parcels of mail. The defendant was subsequently indicted for delay of the mail, possession of stolen mail and theft of mail by a postal employee. After a suppression hearing, the district judge suppressed the two parcels as evidence as being the product of an illegal inventory search. See *United States v. Markland*, 489 F. Supp. 932 (D. Conn. 1980).

In reversing the district court, the Court of Appeals concluded that the police officer was properly performing a legitimate duty. It noted that "[a] law-abiding citizen . . . hospitalized following an accident and concerned about the security of his effects, may reasonably expect that the police will perform . . . their 'community caretaking functions'. *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973). See *South Dakota v. Opperman*, 428 U.S. 364, 368-69 (1976)." Appendix B at 5.

Further, the Court held that the police officer was not required to take the "Schlitz" container into his custody ignorant of its contents; for it may have contained contents that were perishable, valuable or dangerous. Appendix B at 6. In this

posture, the Court was not prepared to say a reasonable person would pick up a package like the one in that case and drive away with it in his automobile without first checking its contents. The legitimacy of the inventory procedures employed necessarily depended upon their reasonableness and, absent any indications that those procedures were a subterfuge for a criminal investigation, a police officer should not be faulted for his good faith actions. *Id.*

The present case presents a situation very similar to the *Markland* case. In its opinion, the Illinois Supreme Court suggested that the police officers could simply have inventoried respondent's partially opened suitcase in a less intrusive manner. Appendix A at A13, A14. This suggestion totally ignores the exigent circumstances that were present at the scene of the accident. As a result of the automobile accident, respondent's suitcase lay open at the rear of the car. He was trapped inside, unable to personally provide for its safekeeping. Then, significantly, he requested a third party bystander to close his suitcase because he had valuables he did not want to lose. These events all occurred before the Sheriff arrived at the scene. Upon his arrival, and after being advised of respondent's concern for his valuables, Sheriff Faulkner and Deputy Alsip undertook their "community caretaking function" and inventoried all the items at the accident scene. This inventory included the contents from respondent's unlocked, partially opened suitcase.

Contrary to the suggestion of the Illinois Supreme Court, the custodial interests in protecting the police from claims of lost or stolen property could not have been *fully* served merely by inventorying "one closed container". Cf. *United States v. Markland, supra*, 489 F. Supp. at 940. (Emphasis added.) Respondent's suitcase, while admittedly a repository of personal effects, was not closed securely and there was a danger of its contents falling out. *Id.* Most importantly, however, is the fact

that a third party bystander came upon the scene well before the Sheriff arrived. His actions, which were entirely reasonable considering what he had been told about the contents of the suitcase, effectively intercepted, and nullified, any objective notice of an expectation of privacy that the respondent may have wished to convey to the Sheriff. Thus, if the rationale of *South Dakota v. Opperman* retains its validity, no violation of the Fourth Amendment occurs when police, at the scene of a fatal automobile accident, inventory the contents of a suitcase found unlocked, partially opened and identified by its owner as containing items of value. In *Markland,* the Second Circuit Court of Appeals took a substantial step to validate routine inventory searches of closed containers. However, the law and rationale of *Opperman* is not yet complete as to the nature of the closed container inventoried.

South Dakota v. Opperman, 428 U.S. 364 (1976) left unanswered the question of whether inventories of closed containers can be reconciled with the Fourth Amendment guarantee to be free from unreasonable searches and seizures. Consequently, state and federal courts have had to fashion for themselves the permissible limits of such searches. This lack of direction has produced numerous decisions that vary in scope and rationale. The *Markland* decision resolves, in part, the question of whether a closed container may properly be opened and inventoried, under the circumstances of that case. Unresolved, however, is the question of whether, under similar circumstances, such an inventory would also be proper if the container is an unlocked, partially opened repository of personal effects. The time has now come to define the limits of inventory searches, as they pertain to such closed containers. If ever there was a case that provided this Court with the premiere opportunity to analyze and define those limits, this is the case. To decline would perpetuate the waffling uncertainty that exists in this area of Fourth Amendment law. Moreover, police officers and the society they serve would continue to be

equally frustrated knowing that their reasonable actions one day are found unreasonable the next.

CONCLUSION

For the foregoing reasons, petitioner, People of the State of Illinois, respectfully request this Court to issue a Writ of Certiorari.

Respectfully submitted,

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APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 296—September Term, 1980

(Argued October 7, 1980 Decided December 8, 1980)

Docket No. 80-1259

UNITED STATES OF AMERICA,

Appellant,

—v.—

ROY LEE MARKLAND, JR.,

Appellee.

Before:

FEINBERG, *Chief Judge,*
VAN GRAAFEILAND, *Circuit Judge,*
and BLUMENFELD, *District Judge.**

Appeal from an order of the United States District Court for the District of Connecticut, Eginton, *J.*, suppressing post-arrest statements and evidence obtained as a

* Of the District of Connecticut, sitting by designation.

result of a police search. Reversed and remanded for further proceedings consistent with this opinion.

THOMAS S. LUBY, Assistant United States Attorney, New Haven, Connecticut (Richard Blumenthal, United States Attorney for the District of Connecticut, *of counsel*), *for Appellant.*

KEVIN J. ACTON, Assistant Federal Public Defender, District of Connecticut, New Haven, Connecticut, *for Appellee.*

VAN GRAAFEILAND, *Circuit Judge*:

Roy Lee Markland, a United States Postal Service supervisor, was arrested on August 11, 1979, following the discovery of two undelivered parcels of mail in a package belonging to him. A grand jury, sitting in the United States District Court for the District of Connecticut, indicted Markland for delay of the mail, possession of stolen mail and theft of mail by a postal employee. *See* 18 U.S.C. §§ 1703(a), 1708 and 1709 (1976). On May 15, 1980, after a suppression hearing, the district judge suppressed the two parcels as evidence, concluding that they were the product of an illegal search. The court also prohibited the use for any purpose at trial of an allegedly false exculpatory statement. We reverse.

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The Facts

On the evening of August 11th, Markland lost control of his personally-owned jeep as he turned onto an exit ramp off Highway I-95 in Milford, Connecticut. The jeep hit a guardrail and overturned. All of its windows were shattered, and papers, coins, and other objects, including a plastic, zippered beverage container bearing a "Schlitz" beer logo, were scattered on the ground outside the vehicle.

Trooper Fragoso of the Connecticut State Police was dispatched to the accident scene. Upon his arrival, Fragoso found Markland on a stretcher in the back of an ambulance and ascertained that he was the driver of the overturned vehicle. Fragoso detected the odor of alcohol on Markland's breath but found him to be coherent. The nature and extent of Markland's injuries were unknown and he was taken to the Milford Hospital.

Officer Fragoso then proceeded to gather up the objects scattered around the overturned jeep. When he picked up the beverage bag, he found it to be surprisingly heavy and decided to check its contents before putting it in his own car. Unzipping the bag, he discovered two unopened mail parcels addressed to Sam Sloat, Inc., a coin dealer in Westport, Connecticut. Papers elsewhere at the scene disclosed that Markland was a postal employee.

Fragoso called United States Postal Inspector Ron Cesa and told him about the two parcels. Cesa informed Fragoso that numerous packages mailed to Sloat had disappeared and that there was no reason for Markland to have any parcels addressed to Sloat in his possession. Cesa also requested that Fragoso hold Markland for questioning, and Fragoso said he would.

Fragoso then drove to the Milford Hospital where he learned that Markland had suffered only minor cuts and bruises and that he was alert and in good spirits. Fragoso charged Markland with driving at an unreasonable speed and drove him to the West Haven Toll Plaza to meet with the postal inspectors. En route, Markland was read his *Miranda* warnings which he indicated he understood. While awaiting the postal inspectors at the Plaza, Markland complained of pain and was returned to the hospital. The hospital physician was satisfied that Markland was not seriously injured and injected him with a water placebo. He was then driven to the postal inspectors' office in New Haven.

In New Haven, Markland was informed of his *Miranda* rights a second time. He said he understood them and initialed a standard form on which they were printed. He also read and signed a standard waiver form. However, after answering several questions asked by Cesa, Markland declined to continue without an attorney. Cesa immediately ceased all questioning, but another inspector did not. In response to a question posed by the latter, Markland said that he was in possession of the packages because he was conducting his own investigation into the mail thefts.

The Two Parcels

When Officer Fragoso found the beer package lying on the ground, the Fourth Amendment, as it was interpreted by the district court, permitted him one of two choices. He could either put the package in his automobile, completely ignorant of its contents, or he could drive away and leave it. Appellee suggests that the latter choice would have been the proper one. In his words:

> No significant governmental interest is served by the recovery of the property at all. If the police never recover any property as a matter of policy, then they are immune from any claims that they stole it, or in some way responsible for its loss (sic). The personal property of an individual is a matter of his personal concern and its preservation and recovery the duty of the individual. Should Markland have his property stolen by a bystander or simply lose the property, there is no meaningful impact on society. It is his loss. The government and the public are still whole.

Appellee's Brief 15.

This argument demonstrates a curious unawareness of a police officer's role in society. Police have a duty to protect both the lives and the property of citizens. *United States v. Gravitt,* 484 F.2d 375, 379 n.3 (5th Cir. 1973), *cert. denied,* 414 U.S. 1135 (1974); *Cotton v. United States,* 371 F.2d 385, 392 (9th Cir. 1967); *People v. Peters,* 18 N.Y.2d 238, 243 (1966), *aff'd sub nom. Sibron v. New York,* 392 U.S. 40 (1968); *People v. Manzi,* 21 App. Div. 2d 57, 59-60 (1st Dept. 1964). In performing this duty, they are required to protect against crime without waiting for it to occur. *People v. Manzi, supra,* 21 App. Div. 2d at 59-60. The Connecticut state police are charged by statute with the duty of "preventing . . . . any violation of the criminal law. . . . " Conn. Gen. Stat. Ann. § 29-7. A law-abiding citizen of that State, hospitalized following an accident and concerned about the security of his effects, may reasonably expect that the police will perform what the Supreme Court has described as their "community caretaking functions." *Cady v. Dombrowski,* 413 U.S. 433, 441 (1973). *See South Dakota v. Opperman,* 428 U.S. 364, 368-69 (1976). We need not

decide whether the police could be held liable to the hospitalized citizen for a failure to perform these functions. *See Schuster v. City of New York,* 5 N.Y.2d 75, 91 (1958) (Conway, *C.J.,* dissenting); *People v. Manzi, supra,* 21 App. Div. 2d at 60. They surely would be derelict in their duty to the public.

This does not mean, however, that Officer Fragoso was required to take the plastic thermal package into his custody with a "pig in a poke" obliviousness as to its contents. This impersonal package could have contained anything from beer to bullion or a bomb. Its contents might have been perishable, valuable, or dangerous. There is nothing to indicate that Fragoso's protective procedures were a subterfuge for a criminal investigation. *See South Dakota v. Opperman, supra,* 428 U.S. at 370 n.5. The legitimacy of these procedures depended therefore upon their reasonableness. *Id.* at 369-76. Unless we are prepared to say that a reasonable person would pick up a heavy plastic thermal package like the one in this case and drive away with it in his automobile without first checking its contents, we should not fault Officer Fragoso for making such a check.

But our conclusion that this was a reasonable search rests not only on the finding that the officer was properly performing a legitimate duty; it also rests in part on the nature of the object searched. The "Schlitz" bag was a type of container designed, and customarily used, for the storage and transport of food and drink. It was not a suitcase, briefcase, purse, or similar repository of personal effects "inevitably associated with the expectation of privacy," *see Arkansas v. Sanders, supra,* 442 U.S. at 762. Of course, containers not "inevitably" used for the storage of private effects may benefit from an expectation of privacy under some circumstances, but this generally

requires that the owner have taken some additional positive step objectively signalling to others an expectation that the privacy of the container's contents will be respected. *See, e.g., United States v. Dien,* 609 F.2d 1038, 1044-45 (2d Cir. 1979), *adhered to on rehearing,* 615 F.2d 10 (2d Cir. 1980) (defendant manifested expectation of privacy by securely taping cardboard boxes and secreting them behind plywood barrier in van whose windows had been blacked out). In this case, the fact that the "Schlitz" bag was zipped shut—as it would ordinarily be in the course of normal use for storing food or drink—was not alone sufficient to give objective notice of an expectation of privacy, in view of the nature of the container. *Cf. United States v. Mannino,* No. 80-1206, slip op. 333 (2d Cir. Nov. 18, 1980) (no expectation of privacy in plastic bag on car seat). In view of this conclusion, we need not decide whether the officer's action would have been unreasonable had he opened a suitcase or other protected form of luggage. *Cf. United States v. Bloomfield,* 594 F.2d 1200 (8th Cir. 1979) (tightly sealed knapsack should have been inventoried as a unit).

Accordingly, the two parcels should not have been suppressed as evidence.

The Post-Arrest Statements

Based on his findings of an illegal search, the district judge held that none of Markland's subsequent statements could be used for any purpose whatever on the trial. The Government challenges both the propriety and scope of this order. Because we hold that the statements were not the product of an illegal search, we need not determine whether the order was improperly broad. It

cannot rest at all on the underpinnings established by the district court.

On remand, the district judge should determine whether any of defendant's statements should be suppressed in whole or in part because improperly obtained under *Miranda v. Arizona,* 384 U.S. 436 (1966). *See Oregon v. Hass,* 420 U.S. 714 (1975).

The order appealed from is reversed, and the matter is remanded to the district court for further proceedings consistent with this opinion.